Message

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Subject: OCSPP News for November 13, 2020

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- Courthouse News Service 11/12; Trump's EPA Defends Asbestos Reporting Loopholes in Court

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- New Food Magazine 11/6; Controversial dicamba herbicides reapproved by the EPA

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- Environmental Working Group 11/12; PFAS Chemicals Harm the Immune System, Decrease Response to Vaccines, New EWG Review Finds
- Beyond Pesticides Blog 11/13; EPA by Fiat Overturns State Authority to Restrict Pesticides in the Face of Its Faltering Programs
- The National Law Review (CMBG3 Law) 11/12; PFAS Consumer Products Regulation: Legislative Update
- JD Supra (Wiley Rein LLP) 11/12; Suit Challenges EPA FIFRA Enforcement Action Against Products Sold as "Cleaning Agents"

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NV nonprofit greenUP! gets $160K EPA grant to support green manufacturing
Northern Nevada Business Weekly

https://www.nnbw.com/news/nv-nonprofit-greenup-gets-160k-epa-grant-to-support-green-manufacturing/

CARSON CITY, Nev. — On Nov. 5, the 30th anniversary of the Pollution Prevention Act, the U.S. EPA announced 11 organizations across nine states would receive a piece of $1.16 million for pollution prevention efforts, including Carson City-based greenUP!

According to a press release from the EPA, $160,000 will support greenUP!'s environmental education efforts to help Nevada businesses cut environmental waste.

"When the groundbreaking Pollution Prevention Act was signed 30 years ago, EPA was given a simple charge: work to prevent pollution before it happens," EPA Office of Chemical Safety and Pollution Prevention Assistant Administrator Alexandra Dapolito Dunn said in a statement. "By providing our partners with essential tools, resources and information, we have taken a strategic approach that has yielded millions of dollars in savings and avoided the use of tens of thousands of pounds of hazardous chemicals. I'm looking forward to seeing the contributions of EPA's 2020 source reduction grantees to our national pollution prevention effort."

Per the EPA, the grant will help provide targeted virtual and in-person trainings and aid in the recovery of businesses through sustainable practices that incorporate source reduction techniques; greenUP! will also conduct follow-up with training participants to document the effectiveness of various pollution prevention practices.

"Private business can use innovative pollution prevention approaches to improve public health and protect the environment," EPA Regional Administrator John Busterud said in a statement. "EPA is excited to support the work of Nevada's greenUP! to advance sustainability innovation with business leaders."

"greenUP! is grateful to EPA for providing funding to support the source reduction work in Nevada," added Donna Walden, president of the greenUP! Board. "This will benefit manufacturers and boost environmental performance in the state."

News of the grant comes a month after the EPA announced 42 organizations across 39 states would receive grant funding totaling $9.3 million to pollution prevention across the country.

Of that total, $345,108 went to greenUP! and Western Nevada College, who are partnering to train 40 manufacturers on safer chemical alternatives, water reduction, energy efficiency and environmental best practices. They also are recruiting 10 WNC interns to conduct on-site visits and provide technical assistance to these manufacturers.

Biden administration expected to increase scrutiny of TSCA risk evaluations, new chemicals
Terry Hyland, Chemical Watch
https://chemicalwatch.com/177721/biden-administration-expected-to-increase-scrutiny-of-tsca-risk-evaluations-new-chemicals

The US EPA under a Biden presidency is likely to adopt a broader approach towards TSCA risk evaluations than the current administration, industry observers have told Chemical Watch. The agency also could increase its scrutiny of new chemical reviews and order more companies to provide chemical data or conduct testing.

"I think there are going to be significant changes both in the review and approval of new chemicals, and then also how the EPA approaches its risk evaluations for existing chemicals," Erik Baptist, a partner with Wiley Rein, said during a Chemical Watch podcast on 10 November discussing the election results.

"Companies need to be more engaged and prepared to fully inform EPA of their uses" of chemicals, said Mr Baptist, who previously served as deputy assistant administrator for law and policy in the EPA's Office of Chemical Safety and Pollution Prevention and as former senior deputy general counsel in the Office of General Counsel at the EPA.

It's also reasonable to expect more rules and orders requiring information and data to support the EPA's ongoing TSCA risk evaluations, Mr Baptist said. "I think that's inevitable," he said, though adding it would have been likely "regardless of who won the election".

Still, the changes could be more subtle, Lawrence E Culleen, partner at law firm Arnold & Porter, told Chemical Watch. The "breadth and depth" of TSCA risk evaluations and risk management rules might be greater under a Biden administration, Mr Culleen said, but the changes will be more on how the EPA approaches the work it is already doing rather than doing new things.

The EPA could take some actions quickly, according to Betsy Southerland, former director of the Office of Science and Technology at the EPA who is now with the NGO Environmental Protection Network (EPN).

These include finalising rules to ban three chemicals – methylene chloride, n-methylpyrrolidone (NMP) and trichloroethylene (TCE) – that were first proposed under the Obama administration, but have been put on hold over the last four years, she said.

First a pause
Few changes are likely to come right away.

The EPA needs to have a new team in position first, said Robert Sussman of Sussman & Associates and counsel for the NGO Safer Chemicals, Healthy Families. This requires political appointments to high-level posts, some of which also require confirmation from the US Senate. Getting the entire political team in place could take a couple of months, he said.

President Trump's first pick to run the agency, Scott Pruitt, was confirmed roughly one month after the president first took office.

Confirmation of presidential appointees is not something that can be taken for granted if the US Senate remains controlled by a Republican majority, Mr Sussman added. A failed nomination would put the administration "back at square one", he said.

It is also common for a new administration to pause and review recently enacted policies as well as regulations and litigation that are still underway. In President Trump's first week in office in early 2017, for example, the administration halted many public communications, froze EPA grants and paused regulations across the federal government.

Possible quick changes
Where there are rules in place with which a new administration disagrees, it can propose to repeal those relatively quickly, Ms Southerland said.

If a rule was controversial – such as the recently finalised rule setting out procedures to issue or repeal agency guidance – there is likely to already be robust comments in the record opposing it, making it easier to point to the administrative record to justify repeal, she said. The science transparency rule, which is due to be finalised soon, may also fall into that category of regulations in line for quick appeal, she said.

The new administration will also need to focus on "a significant amount of litigation", Mr Sussman said.

On TSCA alone, the EPA currently faces lawsuits challenging its final risk evaluations for methylene chloride and hexabromocyclododecane (HBCD), its decision to deny a petition seeking more asbestos reporting, and more.

The agency under a Biden administration will have to decide whether they continue to defend Trump administration actions in the courts, or change course on policies that many US states and environmental groups oppose, Mr Sussman said.

Scrutiny on new, existing chemicals
Mr Sussman said "there will be a strong push" to rethink implementation of the TSCA programme. This could involve redoing some of the risk evaluations that have recently been completed, he said, or "completely restructuring how the EPA does the 20 risk evaluations that are underway" for existing chemicals.

The EPA has said it plans to finalise all of the first ten risk evaluations under amended TSCA by the end of the year. Four have been completed as of 10 November – for methylene chloride, 1-bromopropane, HBCD and carbon tetrachloride. The agency has also laid out the scopes of review for the next 20 substances to be assessed.

Mr Culleen said there are a couple of areas where a newly led EPA might look more critically at TSCA risk evaluations. First, he said, is in assessing how a particular condition of use (CoU) of a substance might affect vulnerable subpopulations, such as looking at workers with a greater risk of exposure or populations that live near facilities where chemicals are being used or manufactured.

The second area is aggregate risks from a chemical through multiple pathways of exposure, he said.

For new chemical approvals, Mr Sussman said, changing the pre-manufacture notifice (PMN) process will be a priority for the environmental community. NGOs are upset that the PMN programme has evolved away from its original intent under amended TSCA to one that is "very much in line with what industry wants", he said.

In a post-election analysis from Arnold & Porter, the law firm said the EPA under a new administration is likely to "implement more aggressive review procedures, leading to lengthier approval processes for new chemicals". It "could revert to practices under the Obama administration in 2016", it said, with additional restrictions on uses of new chemicals when approving them for market entry in the US.

In the end, Mr Culleen said, companies looking for clues on the direction the EPA might take would "be well-served to become familiar with who the appointed officials are that arrive". That includes senior leadership that is politically appointed as well as senior staff. "They will reflect the direction of where things are likely to move," he said.

PFASs
Dealing with per- and polyfluoroalkyl substances (PFASs) is also going to be a big issue, Mr Sussman said. The chemicals are likely to be addressed through EPA laws covering hazardous waste and drinking water. TSCA should play an important role as well, he said. "There is a feeling that EPA has done too little on PFASs and needs to be much more proactive."

Mr Culleen said information and data gathering under TSCA could be used for PFASs as well as other substances. Calling for data under TSCA section 8 or testing under section 4 are easy first steps the agency could consider, he said.

Even before the election, the Biden campaign indicated that tackling PFASs would be a priority, including probable designation of the substances as hazardous. This is likely to come under the Comprehensive Environmental Response, Compensation, and Liability Act, which is designed to help clean up sites contaminated with hazardous waste.

Judge Queries All Sides on EPA's Duty to Collect Asbestos Data
Pat Rizzuto, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/judge-queries-all-sides-on-epas-duty-to-collect-asbestos-data?usertype=External&bwid=00000175-bd66-d11f-a7f5-bfff64eb0001&qid=7010676&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A46&source=newsletter&item=headline&region=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzUtYmQ2Ni1kMTFmLWE3ZjUtYmZmZjY0ZWIwMDAxIiwic2lnIjoiY0prRjhUYkplMUJ6Q1BkRXg0aEV6NEdkbFpRPSIsInRpbWUiOiIxNjA1MjY4OTYwIiwidXVpZCI6ImJPRTE0K0tCNHUxajdzSWpLcGdvSXc9PUpOOFlPdGdlNWZySm5LWi9meTVDTUE9PSIsInYiOiIxIn0%3D

- Hearing focused on what data EPA can 'reasonably' get

- Judge to decide if asbestos case proceeds to arguments

A federal judge asked states, health organizations, and the Environmental Protection Agency on Thursday how much information it is reasonable for the EPA to obtain as the agency decides whether a chemical poses so much risk that its uses must be regulated.

The U.S. District Court for the Northern District of California held a hearing to decide whether the court should issue a summary judgment requiring the EPA to collect information on asbestos imports and its presence in products or dismiss the lawsuit brought by the Asbestos Disease Awareness Organization, Safer Chemicals, Healthy Families and four other groups, and attorneys general from 10 states and the District of Columbia.

The information could help the agency determine whether the deadly, cancer-causing substance should be regulated and how, argued Robert M. Sussman, counsel for the health and environmental groups, and Elizabeth B. Rumsey with California's Department of Justice, which represented the 11 attorneys general.

The attorneys general and health groups are challenging the EPA's denial in 2018 and 2019 of their separate, but related, petitions requesting the EPA to obtain more information about how asbestos is imported into the U.S., where workers, consumers, and the general public could be exposed.

The denial violated the Administrative Procedure Act (APA) and Toxic Substances Control Act (TSCA), the attorneys general and health groups maintain.

EPA's Discretion

The EPA justifiably used its discretion to reject both petitions, said Brandon N. Adkins from the U.S. Department of Justice, which represents the agency. Neither the attorneys general nor the six health and environmental groups proved the information would have made a substantial difference to its risk evaluation, he told the court.

"The risk evaluation must be based on reasonably available information," Adkins said. Nothing in TSCA or the APA requires the agency to issue a data collection rule, he said.

"If there's reasonably available information that could inform the risk evaluation, are you saying the EPA doesn't have to get it?" Judge Edward M. Chen asked Adkins.

The EPA conducted market research regarding asbestos uses and asbestos products, conducted site visits to facilities that import and use the mineral, and invited information from industry stakeholders, the public, and other federal agencies, Adkins said.

"EPA didn't put it's head in the sand," he said. The agency did a lot of work before deciding to deny the petitions, Adkins said.

Effort Needed for Deadly Chemicals

Chen also asked whether the EPA should consider a chemical's potential to kill as it decides how much information to obtain.

The EPA, as an agency responsible for protecting human and environmental health, is "supposed to err on the side of caution on the side of getting more information rather than less," Rumsey said. "That's particularly true here, where the chemical is lethal. It was patently unlawful for EPA to decline to use its authority to get information," she said.

The data gaps in EPA's asbestos risk evaluation, and subsequent regulations, "effectively shield asbestos importers, and those who manufacture/import goods that contain asbestos, from having to disclose their role in distributing asbestos, and prevent EPA from fulfilling its statutory mandate to protect the public from this notorious carcinogen," the states said in a prehearing motion asking the court to order the EPA to collect more information.

Asbestos Claims

Thursday's hearing followed the Missouri Supreme Court's refusal earlier this month to hear Johnson & Johnson's appeal of a $2.1 billion Missouri award to women who claimed its baby powder was laced with asbestos that caused their cancers. Those and other lawsuits—in total some 17,900 talc cases against J&J—mean the company faces possible liabilities ranging between $5 billion and $10 billion in claims. In May, the company announced it will stop selling talc-based baby powder in North America.

Information the attorneys general and nonprofit groups asked the EPA to require companies to report include imports of asbestos itself, of the mineral as a component in aftermarket brake parts and other products, and as a contaminant in products like children's crayons, cosmetics, and talc. Talc also is used to make bathroom fixtures, ceramic tile, paper, plastic, and other products.

In its cross-motion, the EPA asked the court to dismiss the case, because the agency properly used its discretion in deciding to deny both rulemaking petitions.

The case is Asbestos Disease Awareness Org. v. Wheeler, N.D. Cal., No. 19-00871, 11/12/20.

Women's Underwear Maker Sued Over Presence of PFAS Chemicals

Sylvia Carignan, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/womens-underwear-maker-sued-over-presence-of-pfas-chemicals?usertype=External&bwid=00000175-bdb0-d1a3-a17d-fdfc5b4c0001&qid=7010676&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A49&source=newsletter&item=headline&region=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzUtYmRiMC1kMWEzLWExN2QtZmRmYzViNGMwMDAxIiwic2lnIjoiWFpiZDR4WDVYNGZUcTlObDY0aDFDand4dXlnPSIsInRpbWUiOiIxNjA1MjY4OTYwIiwidXVpZCI6ImJPRTE0K0tCNHUxajdzSWpLcGdvSXc9PUpOOFlPdGdlNWZySm5LWi9meTVDTUE9PSIsInYiOiIxIn0%3D

- COURT: C.D. Cal.
- TRACK DOCKET: No. 2:20-cv-10341 (Bloomberg Law Subscription)
- COMPANY INFO: Thinx Inc. (Bloomberg Law Subscription)

A California woman is claiming a brand of absorbent underwear contains unsafe amounts of chemicals that may harm the reproductive system, according to a class action lawsuit filed Thursday.

The claim, brought by San Fernando, Calif., resident Destini Kanan in the U.S. District Court for the Central District of California, said Thinx Inc. failed to inform consumers that its underwear has per- and polyfluoroalkyl substances, a family of chemicals under increasing state scrutiny and regulation.

The company claims its third-party testing results show the absence of some kinds of PFAS, named "long-chain" chemicals because of the length of their molecules, in its products. The company didn't look for short-chain PFAS in its products, which like long-chain PFAS, may cause health effects.

The plaintiff's own testing found short-chain PFAS chemicals "at material and above trace amounts" in Thinx underwear, according to the complaint. The substances used to treat Thinx products may shed PFAS over time, the complaint said.

"Defendant knew, or at minimum should have known, about the existence of PFAS chemicals it its products," according to the complaint.

The company misled consumers by claiming third-party testing "never revealed any harmful chemical levels in Thinx Inc. products," the complaint said.

PFAS, also known as "forever chemicals" because of their persistence in the environment, have contaminated water supplies as well as soil, air, and groundwater in multiple states. Regulators in some states have set limits for the chemicals in drinking water to reduce the public's exposure.

Exposure to PFAS can cause adverse health effects, including developmental harm to fetuses, testicular and kidney cancer, liver tissue damage, and immune system or thyroid effects, according to the Environmental Protection Agency.

The chemicals have become ubiquitous in everyday consumer goods as well as in specialized industrial applications. PFAS have been used in nonstick coatings, stain and water resistant products, and waterproof fabrics for decades.

Cause of Action: California's Song-Beverly Consumer Warranty Act; California False Advertising Law; California Consumer Legal Remedies Act; California Unfair Competition Law.

Relief: Class certification; constructive trust for restitution; injunctive relief; attorneys' fees.

Potential Class Size: U.S. consumers who purchased Thinx products "during the maximum period permitted by law," which the complaint says "likely consists of tens of thousands of people geographically disbursed throughout California."

Response: Thinx didn't immediately respond to a request for comment.

Attorneys: Whitfield Bryson LLP represents Kanan.

The case is Kanan v. Thinx Inc., C.D. Cal., No. 2:20-cv-10341, 11/12/20.

New Jersey PFAS lawsuits add to growing NRD claims against companies
Inside EPA
https://insideepa.com/daily-feed/new-jersey-pfas-lawsuits-add-growing-nrd-claims-against-companies

New Jersey has filed two natural resource damage (NRD) lawsuits against companies over two contaminated sites, adding to the state's growing litigation against businesses to require cleanups and recover natural resource damages, particularly over per- and polyfluoroalkyl substance (PFAS) contamination.

The state's Democratic attorney general (AG), Gurbir Grewal and its top environment official, New Jersey Department of Environmental Protection Commissioner Catherine McCabe, on Nov. 10 announced the litigation against companies for contamination and NRD, with one targeted at a plant that produces PFAS and another filed over releases related to decades of coal tar processing operations. The suits seek to compel cleanup of PFAS, polychlorinated biphenyls, chromium, lead and other chemicals.

They are the latest NRD suits since Grewal and McCabe "declared a 'new day' for environmental enforcement" early in Gov. Phil Murphy's (D-NJ) administration, according to a Nov. 10 press release from the state AG's office.

The legal challenges add to three NRD suits that New Jersey filed in 2018, which the state says were the first of their kind in a decade. In addition, in 2019, the state filed suits against the companies DuPont, Chemours and 3M for PFAS contamination. In 2019, the state also filed action against companies that had sold PFAS in firefighting foam, among other NRD suits.

"As we said at the outset of the Murphy Administration, the days of free passes and soft landings for polluters in New Jersey are over," Grewal says in the press release. "The corporations we're suing knew full well the potential harms they were inflicting on our environment, but chose to forge ahead anyway. When companies disregard the laws meant to protect our environment, they can expect to pay."

The first of the Nov. 10 suits is against Solvay Specialty Polymers USA and Arkema Inc., the current and former owners, respectively, of a Gloucester County site that has manufactured plastics and coatings using PFAS.

"Solvay cannot be allowed to continue to release toxic PFAS chemicals into the environment while leaving the public in the dark about the risks of their practices," McCabe said. "While we always prefer to work with responsible parties to take voluntary measures to address threats to public health, Solvay's steadfast refusal to accept responsibility for its

scientifically-documented impacts to both the health of its neighbors and the environment in West Deptford and the surrounding areas, has left the Department with no choice but to proceed with today's filing."

She also referenced the state's recently issued drinking water regulations, which she said are informed by some of the country's "best research," setting "strong public health protections." New Jersey in April approved enforceable maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) -- at 14 parts per trillion (ppt) for the former and 13 ppt for the latter -- two of the most studied PFAS. Also, the state in 2018 was the first in the country to set an MCL for any PFAS, creating a limit of 13 ppt for perfluorononanoic acid (PFNA).

The state AG's press release contends that Solvay released "tens of thousands of pounds of PFAS compounds" into the environment, exposing the state's natural resources to harm and threatening the health of residents. High levels of PFAS including PFNA and PFOA are in the air, surface water and groundwater on and near the Solvay site, it says.

Erik Olson, the Natural Resources Defense Council's senior strategic director for health, in a Nov. 10 statement said, "Drinking water should be safe from toxic forever chemicals linked to cancer and other devastating health effects. New Jersey regulators are right to take aggressive action against bad actors that for decades have escaped responsibility for their massive contamination by highly toxic chemicals, including one reportedly found at the highest level ever detected in the world."

The second suit was filed against Honeywell, a successor to various companies that discharged large quantities of contaminants into the ground and water near the Quanta Resources Superfund site along the Hudson River in Edgewater.

"Among other things, the complaint seeks the award of clean-up costs to the State and compensation for NRDs resulting from decades of coal tar processing operations at the 15-acre site, as well as the manufacture of paving and roofing materials, and use of the site for waste oil storage and recycling," the AG's office says. It says that the property is continuing to release "heavy end coal tar product" into the Hudson River.

Shaheen Secures Range Of New PFAS Provisions In FY21 Spending Bills
Diana DiGangi, Inside TSCA
https://insideepa.com/tsca-news/shaheen-secures-range-new-pfas-provisions-fy21-spending-bills

Sen. Jeanne Shaheen (D-NH) is touting a number of provisions she helped secure in pending fiscal year 2021 spending legislation that address concerns about the use of and exposure to per- and polyfluoroalkyl substances (PFAS), including calls to create a new registry of exposed veterans and a boost in health effects research funds.

"[I] helped add more than $50 million to support funding for research, addressing contamination, and undertaking regulatory actions related to PFAS and other contaminants of emerging concern," Shaheen said in a Nov. 10 statement.

"This funding also includes $20 million to support state efforts to address PFAS through remediation and cleanup."

Such measures underscore the significant role that Shaheen is playing in enacting a range of bipartisan provisions that could eventually create a broad federal regulatory and health architecture in spending and other must-pass legislation to address PFAS.

For example, when lawmakers return for a lame-duck session of Congress later this month, they will resume negotiating PFAS and other provisions in must-pass defense authorization legislation.

While House lawmakers have sought to include an ambitious set of proposals, including a prohibition on the Defense Logistics Agency (DLA) from procuring certain products containing PFAS, Shaheen has already signaled such measures are unlikely to win Senate approval.

Last month, Shaheen led a bipartisan group of senators in calling for a scaled-back package of PFAS provisions compared with those sought by their House colleagues, declining to back the DLA provision after she failed to include an identical measure in the Senate version of the defense bill.

But many of her other efforts are proving successful. For example, in September, Shaheen, a member of the appropriations committee, led a group of Democratic senators in urging appropriators to provide more than $20 million for EPA's regulatory and research work on PFAS in FY21, though they failed to secure $2 million for the agency to study whether exposure to the chemicals exacerbates the effects of COVID-19.

According to the recently released legislation, the Senate Appropriations Committee is proposing to provide at least $64.5 million to EPA in FY21 -- an increase of more than $25 million over FY20 levels -- to help remediate contamination, assess the chemicals' risks, develop analytical assessment methods, and implement recently adopted regulations governing certain new uses of the chemicals under the Toxic Substances Control Act (TSCA) and requiring release reporting under the Toxics Release Inventory (TRI).

Shaheen's efforts appear to be driven in part by concerns in her home state, where PFAS contamination from the Pease Air Force Base has prompted state lawmakers to adopt strict drinking water standards.

For example, Shaheen notes in her statement that she established "the first-ever nationwide PFAS health impact study in the FY18 defense bill and fought for Pease International Tradeport to be included in the study. Because of her efforts, Pease is serving as a model site for the nationwide study."

In her statement, Shaheen notes that she also "successfully fought to include" $15 million in the FY21 spending bill to ensure that the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry continue the health impact study she authorized.

VA Registry

Shaheen also won new support from appropriators for her effort to create a registry of PFAS-exposed veterans.

She notes in her press release that she was able to secure non-binding report language that "encourages" the Department of Veterans Affairs (VA) to "establish and maintain a registry for veterans who may have been exposed to PFAS due to occupational exposure to aqueous film-forming foam (AFFF) during their military service."

Shaheen's provision also encourages the VA to develop a public information campaign to inform eligible individuals about the registry.

The non-binding language is based on legislation she introduced with Sen. Mike Rounds (R-SD) that would create a national database for service members and veterans experiencing health problems possibly due to contamination from PFAS.

The bill would also allow military personnel and veterans to receive updates on recent scientific developments on the effects of PFAS exposure, availability of possible treatment options, and information on what resources may be available to address their health concerns.

Shaheen also says that she secured an additional $2 million for research into PFAS contamination of personal protective equipment of firefighters, who are regularly exposed to PFAS-containing firefighting foams on the job.

"Sen. Shaheen has led efforts in Congress to address PFAS exposure, and specifically, occupational exposure to the chemicals," the release says, citing her sponsorship of S.858, an amendment to the FY20 defense authorization law that required the Defense Department to include blood testing for PFAS as part of routine physicals for military firefighters. -- Diana DiGangi (ddigangi@iwpnews.com)

Senate Panel Urges EPA To Apply TSCA 'Best Science' Maxim Agency-Wide

Maria Hegstad, Inside TSCA

https://insideepa.com/tsca-news/senate-panel-urges-epa-apply-tsca-best-science-maxim-agency-wide

Senate appropriators are urging EPA to require that all of its programs adhere to the language in TSCA requiring that they only use the "best available" scientific evidence in their risk assessments, echoing legislation pushed by a Republican senator and backed by industry groups but opposed by environmentalists.

"The Committee notes that in 2016 Congress approved on a bipartisan basis amendments to the Toxic Substances Control Act [TSCA] requiring the Agency to conduct chemical assessments utilizing the best available scientific evidence," the Senate Appropriations Committee said in an explanatory statement accompanying EPA's fiscal year 2021 funding bill it released Nov. 10.

"The Committee expects the Agency to meet the standards of the applicable statutory programs in all risk assessments."

While the language is not considered binding, it echoes legislation introduced by Sen. James Lankford (R-OK), a member of the committee, who has long pushed legislation to apply the standard across all scientific agencies.

In late September, Lankford, who also chairs the Senate Homeland Security and Governmental Affairs regulatory affairs subcommittee, introduced the latest version of his bill, S. 4693.

The bill "would apply the same scientific standards found in [TSCA] to all rulemaking in the entire federal government, which helps make those standards consistent for Americans interacting with those agencies," Lankford said in a statement.

The bill would require federal agencies when issuing a rule to consider "the extent to which the scientific information is reasonable and consistent with the intended use; the extent to which the scientific information is relevant; the clarity and completeness of the information; any variability and uncertainty in the information; and the extent of independent verification or peer-review of the information," according to a summary of the legislation.

Earlier versions of the legislation have drawn criticism from environmentalists, who have charged that its adoption would hamstring regulators. "I strongly believe that these generally accepted standards cannot be clearly legislated without undermining innovation and accounting for the broad array of scientific methods," Andrew Rosenberg, director of the Center for Science and Democracy at the Union of Concerned Scientists, said in 2017 testimony on an earlier version of the bill.

But chemical industry representatives welcomed the legislation, arguing it would force EPA and other agencies to be more consistent in their approaches. "Providing clear and specific definitions for terms like best available science . . . would be beneficial to the consistency, reliability and credibility of EPA's regulatory decisions. These definitions should address not only what Agencies should consider when evaluating scientific information, but also what information Agencies should present in evaluations. Requiring the Agencies to 'show their work' and present their thought process in a transparent and clear manner would have tremendous value," Nancy Beck, then the senior director of regulatory and technical affairs at the American Chemistry Council, said in her testimony on the earlier version of the bill.

IRIS Program

The appropriations report language about best available science falls within a passage regarding EPA's Integrated Risk Information System (IRIS) program, long a popular punching bag for Republicans, industry and other regulated entities.

The program's influential risk analyses focus on chemicals' "hazards" and related dose-response analyses, rather than their "risks," because they do not account for exposures. Instead, they are intended to inform program offices that will use the IRIS analyses in combination with exposure information to inform their decisions. But regulated groups argue IRIS assessments are often too conservative and likely to drive overly stringent risk management actions.

During the Trump administration, the program has been largely sidelined while the agency concentrated instead on standing up the new chemical risk analysis program within EPA's toxics office, which is tasked with implementing Congress' 2016 reform of TSCA.

On IRIS, the Senate appropriators direct EPA to "continue following the guidance" contained in the FY18 appropriations report, which stated the appropriations committees' concerns that IRIS "has appeared on the Government Accountability Office's (GAO) High Risk List since 2008," and also noted that while IRIS staff had made progress to implement recommendations to improve the program from the National Academy of Sciences in 2011 and 2014, they remained "concerned that the recommendations have not been fully implemented."

The new report also appears to recommend that EPA program offices reduce their use of the IRIS assessments. "Given the Committee's noted concerns of the IRIS program in" that last report, "the Committee directs that [EPA's] Office of Chemical Safety and Pollution Prevention and other Agency program offices maintain the responsibility for development of risk assessments consistent with previous fiscal years and in accordance with relevant statutory programs."

While critical, the language is not as critical as prior report language Republicans proposed in prior spending bills -- though none was enacted. For example, in FY18, House Republicans sought to direct EPA to defund IRIS while the Senate version ordered EPA to consolidate its risk assessment programs within EPA's toxics office, shifting IRIS from the research office.

Still, the new Senate language is at odds with that found in House appropriations report language, which raised concerns that EPA has inappropriately shifted staff from IRIS to support the TSCA program within EPA's Office for Pollution Prevention and Toxics (OPPT).

"The Committee remains deeply concerned that the Agency has been ignoring Congressional directives and inappropriately assigning resources provided for [IRIS] to support work in [OPPT]," the House report states.

"In [FY21], the Committee expects additional resources to be made available to the IRIS program as directed above, and that the program continue within the Office of Research & Development [ORD]."

Further, the "Committee expects that workforce costs for IRIS staff who have been detailed to other programs or to other agencies will be borne by the hosting program or agency. Additionally, to ensure a neutral, systematic, and independent evaluation of the science underlying its decisions, the Agency is directed to utilize [ORD] to develop the hazard identification and dose-response portions of all Agency risk assessments. The Agency may realign [personnel] to the [ORD] as necessary."

It is unclear from the report language if the House committee is directing ORD to develop hazard identification and dose-response for OPPT. For the first 10 evaluations of existing chemicals that OPPT developed under reformed TSCA, the office has relied in part on existing IRIS assessments where they exist -- a fact that has led to criticism from some industry groups.

Ongoing Assessments

The new Senate report also directly addresses two ongoing assessments at EPA -- including a pending IRIS assessment of inorganic arsenic that has been in various stages of progress at EPA for years, and the TSCA program's widely criticized draft asbestos evaluation.

"The Committee understands that a revised risk assessment of inorganic arsenic is currently under development by the Agency," the report states. "The Committee notes the importance of a robust evaluation of all relevant scientific data, including mode of action data. The Committee directs the Agency to brief the Committee if and when the revised risk assessment is completed."

On the TSCA asbestos evaluation, the report also "notes that the EPA released a draft risk evaluation for asbestos in March of this year. As the Agency continues to find the high risks associated with exposure to asbestos, the Committee encourages the Agency to finalize the risk evaluation and report to Congress as expeditiously as possible. The Agency must work with Congress to effectively protect communities from further exposure."

The comment follows the collapse last month of asbestos-ban legislation in the House, which had widely been expected to win approval before last-minute changes sought by trial lawyers and opposed by industry doomed its passage.

The report also continues funding for a series of programs that the Trump administration has sought to defund or significantly reduce funding towards in earlier presidential budget proposals, including the Endocrine Disruptor Screening Program, the computational toxicology research program, EPA's green chemistry Safer Choice program, the Pollution Prevention program and the Lead Risk Reduction program. -- Maria Hegstad (mhegstad@iwpnews.com)

As Demand Soars, Environmentalists Urge EPA To Curb Toxic Disinfectants
Diana DiGangi, Inside TSCA
https://insideepa.com/tsca-news/demand-soars-environmentalists-urge-epa-curb-toxic-disinfectants

Environmentalists are urging EPA to limit its approvals of toxic surface disinfectants to mitigate the effects of the coronavirus even as some GOP lawmakers are pressing the Centers for Disease Control and Prevention (CDC) to follow EPA's approach to ensure medical professionals have access to the products to address soaring demand.

Such competing concerns poses a potential problem for President-elect Joe Biden, who has made ending the coronavirus pandemic a top priority, but has not laid out plans for how he will direct EPA to approach its role guiding the disinfectant market.

In an interview with Inside TSCA, two top officials with Beyond Pesticides raised concerns with EPA's recent effort to approve long-lasting surface disinfectants, saying this encourages manufacturers to embrace more toxic chemicals as ingredients in their products.

"EPA's job is to review these materials, but the way they have pushed what they're doing has made the focus on using a toxic chemical on all these surfaces, as opposed to what I think is the more urgent problem of dealing with ventilation and airflow in buildings," said Terry Shistar, a science advisor and board member of Beyond Pesticides.

She said that because the virus is airborne, and that's where the most exposure is going to come from, "EPA's approach focuses on the wrong issue."

Jay Feldman, the group's executive director, agreed, saying that EPA currently "doesn't embrace its mandate to look at risk from a relative perspective."

"EPA's responsibility is to look at management systems and not just the allowance of chemicals outside of that system. And historically, that's where EPA has put the emphasis: on the wrong part of the problem," he said.

Their criticisms come as EPA is continuing its efforts to approve one or more durable surface disinfectants as a way to limit the spread of the virus, especially in public spaces.

For example, the agency is currently taking comment on its interim guidance that seeks to cut the time it takes to review and approve certain new and amended surface disinfectant product formulations that can provide longer-lasting benefits in curbing the spread of SARS-CoV-2.

The agency has also sought to bolster its List N directory of products proven effective against either SARS-CoV-2 or tougher-to-kill viruses, as well as speeding up research into products with residual disinfectant properties that repel viruses from a surface between cleanings.

So far, the agency has only been able to offer an emergency approval for one product, known as SurfaceWise2, for a narrow set of such uses on some aircraft and healthcare facilities in Texas.

But the approval drew safety concerns from environmentalists, who fear that quaternary ammonium, or quat, the product's active ingredient, poses risks from prolonged skin and eye contact, both of which are possible when it is used in aircraft cabins.

To underscore such concerns, the Natural Resources Defense Council (NRDC) earlier this month filed a Freedom of Information Act lawsuit seeking the data underlying the agency's emergency approval.

CDC Guidance

While environmentalists are concerned with the agency's actions, GOP lawmakers and medical professionals are pressing the CDC to follow EPA's approach.

A group of five House Republicans, who are all dentists, wrote to CDC Director Robert Redfield calling for the centers to follow EPA's approach.

"We urge the CDC to develop guidance to help clinicians know what to do when surface disinfectants are not readily available. And we hope such guidance will address whether and how surface disinfectants that the EPA is allowing for temporary emergency use can be leveraged in health care settings," the lawmakers wrote in an Oct. 23 letter distributed by the American Dental Association.

The lawmakers – Reps. Brian Babin (R-TX), Mike Simpson (R-ID), Paul Gosar (R-AZ) Drew Ferguson (R-GA) and Jeff Van Drew (R-NJ) -- noted that there is a growing scarcity of surface disinfectants for use in health care settings as the pandemic has caused sales of aerosol disinfectants to surge 520 percent over the same time last year, while sales of multipurpose cleaners are up almost 250 percent.

As a result of such demand, "manufacturers and retailers are struggling to meet demand, and most are now rationing sales."

The Beyond Pesticide representatives do not dispute the need to mitigate the spread of the virus on surfaces but they say they do not believe it needs to be done with toxic chemicals.

"We're not saying that it's not transmitted through surfaces, or that that's not an issue to address, because it is," says Feldman. "The question is - if you're developing an efficacious program, you don't really need to rely on toxic substances.

Historically, Feldman adds, EPA has "mismanaged the messaging for public safety, in that people feel they can resolve a problem with a spray or application of a toxic substance, rather than look at the underlying conditions of avoidance, or prevention."

Now, the two environmentalists say, officials appear likely to argue the benefits of substances like quats that have long-lasting effects rather than focusing on less-harmful alternatives, such as more-frequent applications of hydrogen peroxide and soap and water.

"It's really unfortunate that EPA has never interpreted its authority to really embrace the unreasonable adverse effects standard," a standard under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that requires registered pesticides to be shown to not cause unreasonable adverse effects on the environment, says Feldman. He believes that if adopted, this would create an evaluation process that would determine the reasonable risks in light of the availability of a range of alternatives with different risk factors."

"To us, . . . it's not reasonable to allow a level of risk that we are allowing with some of the List N products when we have less toxic alternatives that are just as effective," he adds.

Feldman says he fears that EPA's efforts to approve longer-lasting disinfectants will encourage manufacturers of products containing quats to seek to get an extended timeframe attached to their registrations.

"We're not disputing that it may be the case, and certainly they're going to have to submit the efficacy data, we're just concerned that List N and this additional labeling will drive the market more toward the more hazardous materials" even in the face of less toxic materials. -- Diana DiGangi (ddigangi@iwpnews.com)

Trump's EPA Defends Asbestos Reporting Loopholes in Court
Nicholas Iovino, Courthouse News Service
https://www.courthousenews.com/trumps-epa-defends-asbestos-reporting-loopholes-in-court/

SAN FRANCISCO (CN) — Despite identifying major gaps in knowledge about asbestos in a recent draft risk report, the Trump administration on Thursday defended lax reporting rules that let companies avoid disclosing how much asbestos is made, imported and put into U.S. products.

"The EPA has offered its basis which is rooted in science, and the court should defer to the agency's discretion," Justice Department lawyer Brandon Adkins argued in federal court in California.

Adkins was defending the U.S. Environmental Protection Agency's December 2018 denial of a petition seeking to close loopholes in asbestos reporting requirements for U.S. importers and manufacturers.

Asbestos Disease Awareness Organization and four other groups sued the EPA in February last year for denying their petition. They said the agency ignored "serious, well-documented concerns," including the discovery of asbestos in Playskool crayons in 2018 and in makeup sold at the retailer Claire's in 2017.

Ten states and the District of Columbia, led by California, followed with their own lawsuit challenging the agency's refusal to close those loopholes in June 2019.

Recognized as a human carcinogen since the 1970s, asbestos exposure has been linked to cancers of the lungs, ovaries and larynx. The EPA banned asbestos in 1989, but the Fifth Circuit Court of Appeals overturned the ban two years later.

The EPA's Chemical Data Reporting (CDR) rule, enacted in 2011, mandates that companies report asbestos levels in their products. But in July 2017, the EPA exempted companies from those requirements, finding that "reporting is not required for 'naturally occurring chemical substances."

In denying a petition to close that loophole, the agency said stricter reporting rules would not produce new information "that is not already known to EPA" and that it is "aware of all ongoing uses of asbestos and already has the information that EPA would receive if EPA were to amend the CDR requirements."

During a hearing on dueling motions for summary judgment Thursday, the states and public health advocacy groups said the EPA's explanation is contradicted by its April 2020 draft risk evaluation for asbestos. The report acknowledged "a lack of information/details on the market share of asbestos-containing products available to both workers and consumers."

"What we're hearing from the agency is some scientific hocus pocus provides a basis for overlooking these critical information gaps and not using the CDR reporting to fill them," attorney Robert Sussman, representing public health advocacy groups, argued in court.

The Trump administration says the court cannot consider the EPA's April 2020 draft risk report because it was not considered when the agency denied the petition at issue in 2018. Because the report is not final, it also may not be considered as an official EPA comment or position, Adkins argued.

But ignoring the draft report might cause the court to miss an important piece of evidence, U.S. District Judge Edward Chen suggested.

"Here, the action was taken when the agency said, 'We have enough facts,' and then there's other evidence — call it extraneous, extrinsic evidence — that tends to show the contrary," Chen said.

Adkins replied that the court need not look to that report for evidence that the EPA lacked information. The agency acknowledged as much in prior reports, including in a 2017 scoping document.

"EPA was very upfront in denying the petitions that there existed certain information gaps," Adkins said. "The EPA also explained, whereas here when EPA has certain information gaps, EPA relies on other scientific processes such as modeling that are subject to scientific review."

Sussman said the EPA has yet to explain how its modeling and other scientific processes make it unnecessary to obtain more data on how many U.S. workers and consumers are exposed to asbestos.

The EPA is required to use "reasonably available information" when it conducts risk assessments for toxic substances. Adkins said Congress gave the EPA power to determine what information is reasonably available. In this case, the agency found that voluntary reporting by industries would provide adequate information.

Chen questioned how information accessible through reporting rules authorized by Congress is not easily attainable.

"If additional information that may be helpful is available through narrowing some of these exemptions and requiring more robust reportage by the submitters, why is that information not reasonably available?" Chen asked.

Evaluating the adequacy of information the EPA relied on for its risk assessment falls outside the scope of this litigation and the court's jurisdiction, Adkins replied. Only a U.S. court of appeals can review the risk evaluation once it's finalized.

The real question, Adkins insisted, is whether the petitioners presented adequate evidence to convince the EPA that expanded reporting would produce pertinent information, and whether the agency rationally denied their petition.

"I think the court's review here is to see if there's a reasonable basis for that decision," Adkins said.

Representing the states, California Deputy Attorney General Elizabeth Rumsey implored Chen to consider the April 2020 draft risk report, arguing it clearly shows EPA's efforts to backfill its knowledge gaps has fallen short.

"It terrifies me as the mother of a four-year-old that this substance is coming in yarn, in crayons, in talc," Rumsey said. "For EPA to say, 'we have all the information we need,' the [draft risk evaluation] shows it was wrong then. It has not paid off. Those information gaps have not been filled."

After about two hours of debate, Chen took the arguments under submission.

New research adds evidence that weed killer glyphosate disrupts hormones
Carey Gillam, US Right to Know
https://usrtk.org/pesticides/new-research-adds-evidence-that-weed-killer-glyphosate-disrupts-hormones/

New research is adding worrisome evidence to concerns that the widely used weedkilling chemical glyphosate may have the potential to interfere with human hormones.

In a paper published in the journal Chemosphere titled Glyphosate and the key characteristics of an endocrine disruptor: A review, a trio of scientists concluded that glyphosate appears to have eight out of ten key characteristics associated with endocrine disrupting chemicals . The authors cautioned, however, that prospective cohort studies are still needed to more clearly understand the impacts of glyphosate on the human endocrine system.

The authors, Juan Munoz, Tammy Bleak and Gloria Calaf, each affiliated with the University of Tarapacá in Chile, said their paper is the first review to consolidate the mechanistic evidence on glyphosate as an endocrine-disrupting chemical (EDC).

Some of the evidence suggests that Roundup, Monsanto's well-known glyphosate-based herbicide, can alter the biosynthesis of the sexual hormones, according to the researchers.

EDCs may mimic or interfere with the body's hormones and are linked with developmental and reproductive problems as well as brain and immune system dysfunction.

The new paper follows publication earlier this year of an assortment of animal studies that indicated glyphosate exposures impact reproductive organs and threaten fertility.

Glyphosate is the world's most widely used herbicide, sold in 140 countries. Introduced commercially in 1974 by Monsanto Co, the chemical is the active ingredient in popular products such as Roundup and hundreds of other weed killers used by consumers, municipalities, utilities, farmers, golf course operators, and others around the world.

Dana Barr, a professor at Emory University's Rollins School of Public Health, said the evidence "tends to overwhelmingly indicate that glyphosate has endocrine disrupting properties."

"It's not necessarily unexpected since glyphosate has some structural similarities with many other endocrine disrupting pesticides; however, it is more concerning because glyphosate use far surpasses other pesticides," said Barr, who directs a program within a National Institutes of Health-funded human exposure research center housed at Emory. "Glyphosate is used on so many crops and in so many residential applications such that aggregate and cumulative exposures can be considerable."

EDCs have been a subject of concern since the 1990s after a series of publications suggested that some chemicals commonly used in pesticides, industrial solvents, plastics, detergents, and other substances could have the capacity to disrupt connections between hormones and their receptors.

Scientists generally recognized ten functional properties of agents that alter hormone action, referring to these as ten "key characteristics" of endocrine-disruptors. The ten characteristics are as follows:

EDC's can:

- Alter hormone distribution of circulating levels of hormones
- Induce alterations in hormone metabolism or clearance
- Alter the fate of hormone-producing or hormone-responsive cells
- Alter hormone receptor expression
- Antagonize hormone receptors
- Interact with or activate hormone receptors
- Alter signal transduction in hormone-responsive cells
- Induce epigenetic modifications in hormone-producing or hormone-responsive cells
- Alter hormone synthesis
- Alter hormone transport across cell membranes

The authors of the new paper said a review of the mechanistic data showed that glyphosate met all of the key characteristics with the exception of two: "Regarding glyphosate, there is no evidence associated with the antagonistic

capacity of hormonal receptors," they said. As well, "there is no evidence of its impact on hormonal metabolism or clearance," according to the authors.

Research over the last few decades has largely focused on links found between glyphosate and cancer, particularly non-Hodgkin lymphoma (NHL.) In 2015, the World Health Organization's International Agency for Research on Cancer classified glyphosate as a probable human carcinogen.

More than 100,000 people have sued Monsanto in the United States alleging exposure to the company's glyphosate-based herbicides caused them or their loved ones to develop NHL.

The plaintiffs in the nationwide litigation also claim Monsanto has long sought to hide the risks of its herbicides. Monsanto lost three out of three trials and its German owner Bayer AG has spent the last year and a half trying to settle the litigation out of court.

The authors of the new paper took note of the ubiquitous nature of glyphosate, saying "massive use" of the chemical has "led to a wide environmental diffusion," including rising exposures tied to human consumption of the weed killer through food.

The researcher said that though regulators say the levels of glyphosate residue commonly found in foods are low enough to be safe, they "cannot rule out" a "potential risk" to people consuming foods containing contaminated with the chemical, particularly grains and other plant-based foods, which often have higher levels than milk, meat or fish products.

U.S. government documents show glyphosate residues have been detected in a range of foods, including organic honey, and granola and crackers.

Canadian government researchers have also reported glyphosate residues in foods. One report issued in 2019 by scientists from Canada's Agri-Food Laboratories at the Alberta Ministry of Agriculture and Forestry found glyphosate in 197 of 200 samples of honey they examined.

Despite the concerns about glyphosate impacts on human health, including through dietary exposure, U.S. regulators have steadfastly defended the safety of the chemical. The Environmental Protection Agency maintains that it has not found "any human health risks from exposure to glyphosate."

EPA facing lawsuits over atrazine, dicamba

Steve Davies, Ag Week

https://www.agweek.com/business/agriculture/6761327-EPA-facing-lawsuits-over-atrazine-dicamba

Grower groups disagree with cutoff dates and buffer zones for dicamba use, and environmental groups believe the EPA needs to look into environmental effects of atrazine, propazine and simazine.

The Environmental Protection Agency is facing more lawsuits over herbicides, including a challenge from grower groups over new dicamba restrictions and a lawsuit from environmental groups over atrazine.

The grower lawsuit, brought by the American Soybean Association and Plains Cotton Growers in Texas, alleges that expanded buffer zones to protect endangered species and downwind crops from dicamba applications will severely cut into their crop acreage and that cutoff dates will heighten weed pressure.

EPA recently approved five-year registrations for Bayer's Xtendimax, BASF's Engenia and Syngenta's Tavium, but included a June 30 cutoff date for soybeans and July 30 for cotton. The agency also expanded downwind buffer zones to protect endangered species and other crops and vegetation from off-target movement.

EPA approves over-the-top dicamba use for five years

Amid dicamba uncertainty, Enlist soybeans may be a popular option

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"Cotton and soybean growers planting in the nearly 300 counties nationwide potentially inhabited by listed species are subject to 310-foot downwind application buffers, and a 57-foot omnidirectional buffer, each ostensibly designed to achieve [Endangered Species Act] compliance," the ASA/Plains Cotton Growers lawsuit says. "Growers must also abide by a 240-foot, universally controlling, downwind FIFRA application buffer."

They are asking the court to rule that those restrictions are "arbitrary and capricious" and have EPA review them under the Federal Insecticide, Fungicide, and Rodenticide Act and the Endangered Species Act.

But the groups also make clear they do not want the court to take dicamba products away from them. They are asking the U.S. District Court for the District of Columbia to remand the dicamba decisions to EPA without vacating the overall decisions.

They also ask the court specifically to uphold EPA's determinations that use of the herbicides won't affect certain species.

Upper EPA brass attend ND Grain Growers E-Tour

ASA President Bill Gordon, a soybean grower from Worthington, Minn., said while "ASA appreciates EPA's work on re-registering dicamba for use on soybeans and believes dicamba can be a critical tool for combating herbicide-resistant weeds," there also are "two significant flaws" with the decision: the cutoff date and the buffer requirements.

"We are confident that remanding this back to EPA for further consideration can lead to a better solution for growers who could be negatively affected if planting is delayed, for example by adverse weather conditions or late weed emergence, past June 30 or whose production volume would be significantly lessened by the wider buffer zones," Gordon said.

"Without dicamba products in their arsenal, many farms would be largely defenseless in their fight against weeds," the groups' lawsuit says. "A handful of other herbicides remain available but are often only partially effective, if at all."

The grower groups say the new restrictions would hamper production.

A soybean farmer with a 54-acre field, for example, who "happens to live in one of the several hundred ESA-restricted counties," could lose nearly a third of farmable land because of the species buffer, the complaint says.

In addition, for cotton, the lawsuit says "the application restrictions' July 30 cutoff date exposes many growers to potentially devastating weed pressure during the heart of cotton's growth cycle, often deep into August and September."

Environmental groups that successfully challenged prior dicamba registrations plan to sue again but have yet to file a complaint. Center for Food Safety Legal Director George Kimbrell would say only that with its recent decision, "EPA continues down the wrong path of more damage from dicamba, and we're evaluating all options to protect farmers and wildlife habitat."

Atrazine is another widely used herbicide coming under scrutiny, as environmental groups prepare to move forward with a lawsuit in the U.S. Court of Appeals for the Ninth Circuit. The Center for Biological Diversity, Rural Coalition, Pesticide Action Network North America, Center for Food Safety and Beyond Pesticides have petitioned the court to review the agency's Sept. 2 interim registrations not just for atrazine, but for the related herbicides propazine and simazine.

The petition filed in the Ninth Circuit includes few details, saying the interim decisions "lack support in substantial evidence" and seeking to have them "set aside."

Center for Biological Diversity Senior Scientist Nathan Donley said the lawsuit would focus on compliance with FIFRA, which requires applicants for registration to show their products won't cause "unreasonable adverse effects on the environment," including risks to people.

The groups will rely in part on the Ninth Circuit's decision earlier this year vacating dicamba registrations, in which the court said EPA "substantially understated the risks" of over-the-top applications of dicamba and did not acknowledge the economic and social costs of using dicamba.

In announcing its interim atrazine decision, EPA said it was imposing new personal protective equipment requirements, but Donley said because of the heat farmworkers have to work in, "a lot of the PPE requirements are probably not going to be followed."

He also said EPA had removed additional safety factors that would have resulted in greater restrictions on the products.

"It's something we're seeing them doing a lot," Donley said. "They're erasing protections at the risk assessment phase, and then when it comes to the decision phase, they're putting in place greater protections or restrictions and sort of glossing over what they did the previous step."

EPA lowered the amount of atrazine and simazine that can be applied to turf, for example, but Donley said those would have been greater if the safety factors were taken into account.

On the other side of the issue, Gary Marshall, CEO of the Missouri Corn Growers Association and chair of the Triazine Network, pushed back against claims that EPA's decision threatens public health and the environment.

"Absolutely, EPA spent a lot of time with their legal team to make sure their policy decision would be entirely defensible in court," Marshall told Agri-Pulse. "Our number one goal, good or bad, was for the EPA to 'follow the science.' They did that with this ruling."

He said environmental groups that are suing are using old studies. "They completely ignore all the new science which EPA has thoroughly reviewed from the last 15 years," he said. "These products are the most heavily researched compounds in the history of crop production and are among the safest to use for the environment, human safety and for the safety of aquatic life."

The environmental groups also allege EPA's changes to the registration will allow more atrazine in waterways. EPA has previously denied that.

Controversial dicamba herbicides reapproved by the EPA
Joshua Minchin, New Food Magazine
https://www.newfoodmagazine.com/news/123988/controversial-dicamba-herbicides-reapproved-by-the-epa/

Concerns have been raised over the safety of three dicamba herbicides after the Environmental Protection Agency (EPA) approved their registrations last week.

The Environmental Protection Agency (EPA) has approved the registration of two dicamba herbicides and extended the registration of another, in a move which has raised concerns in some quarters over the safety of the products.

XtendiMax and Engenia, manufactured by Bayer and BASF respectively, are deigned for use on dicamba-tolerant cotton and soybean crops. The two chemical giants submitted applications to the US agency in July 2020, with the EPA last week announcing it was satisfied the two dicamba herbicides "meet the standard for registration under Federal Insecticide, Fungicide, and Rodenticide Act section 3(c)(5)".1

In addition, Basel-based Syngenta Group submitted an application to extend the registration of Tavium, which tackled broadleaf and grass weeds in dicamba-resistant cotton and soybean crops. Once again, the EPA agreed that the application met the federal legislation – although it was keen to stress in all three instances that this particular approval did not permit the sale and registration of the three herbicides and this would need to be granted through a separate 'Registration Notice'.

In response to the COVID-19 pandemic AOAC INTERNATIONAL has activated an accelerated program to evaluate test kits for detecting coronavirus on surfaces. This webinar will present the audience with a a summary of the Emergency Response Validation option of the AOAC Research Institute's Performance Tested Methods Program and introduce a rapid, PCR test workflow available from Thermo Fisher Scientific.

The decision come months after the Ninth Circuit of the US Court Appeals (which adjudicates over cases in the west of the country) ruled that both XtendiMax and Engenia "violated FIFRA", in effect throwing out the EPA registrations of both products made in 2018.2 The court ruling adjudged that the EPA had failed to consider three crucial risks. Firstly, that it had "substantially understated the amount of DT seed acreage that had been planted in 2018, and, correspondingly, the amount of dicamba herbicide that had been sprayed on post-emergent crops.

"Second, the EPA purported to be agnostic as to whether formal complaints of dicamba damage under-reported or over-reported the actual damage, when record evidence clearly showed that dicamba damage was substantially underreported.

"Third, the EPA refused to estimate the amount of dicamba damage, characterizing such damage as 'potential' and 'alleged,' when record evidence showed that dicamba had caused substantial and undisputed damage."3

Given EPA-approved versions of dicamba have already damaged millions of US acres of crops and natural areas, there's no reason to trust that the agency got it right this time.

Alongside the approvals, the EPA has published certain "control measures" which it believes will limit the impact of so-called "dicamba drift", which can cause damage to non-target crops. It requires a 240ft in-field downwind buffer, rather than the 110ft it requested in 2018. In addition, there are now specific restrictions on when the dicamba herbicides can be used throughout the year (ie, not when non-target crops are vulnerable) and limits the use of over the top dicamba products to just two per year.

These measures do not go far enough for some though. The Centre for Food Safety, which argued in the Ninth Circuit case, still believes that dicamba herbicides are dangerous. "Rather than evaluating the significant costs of dicamba drift as the Ninth Circuit told them the law required, EPA rushed re-approval as a political prop just before the election, sentencing farmers and the environment to another five years of unacceptable damage" said George Kimbrell, legal director at Center for Food Safety.

Nathan Donley, a senior scientist at the Center for Biological Diversity, took aim at the EPA: " Given EPA-approved versions of dicamba have already damaged millions of US acres of crops and natural areas, there's no reason to trust that the agency got it right this time."4

The EPA have been approached for comment.

EPA Proposes Revised Crop Groups for Herbs and Spices
Jason E. Johnston, B&C Pesticide Law and Policy Blog
http://pesticideblog.lawbc.com/entry/epa-proposes-revised-crop-groups-for-herbs-and-spices1

On November 6, 2020, the U.S. Environmental Protection Agency (EPA) published a final rule in the Federal Register that makes several changes to "Crop Group 19: Herbs and Spices Group." 85 Fed. Reg. 70976. The original proposed rule, which was published on August 27, 2019 (84 Fed. Reg. 44804), was created in response to a petition developed by the

International Crop Grouping Consulting Committee (ICGCC) workgroup that was submitted by the Interregional Research Project Number 4 (IR-4). EPA received comments from eight entities and revised the original proposed rule in response to those comments.

The major components of the new rule are a revision of the commodity definition for marjoram; the addition of three new commodity definitions for basil, edible flowers, and mint; and replacement of the existing "Crop Group 19: Herbs and Spices Group" with two new expanded crop groups, "Crop Group 25: Herb Group" and "Crop Group 26: Spice Group." Recognizing that the existing combined Crop Group 19 Herbs and Spices Group limited the establishment of crop group tolerances, EPA created the two new separate crop groups to benefit herb and spice growers. EPA states that the anticipated economic benefit of the new crop groups is estimated to be a cost savings of $51.8 million annually.

The crop groups in the final rule include even more commodities than those listed in the proposal. Crop Group 25 includes 418 herb commodities directly and 25 indirectly through the modification of the definition of edible flowers in 40 C.F.R. Section 180.1. Crop Group 26 includes 205 spice commodities. The final rule specifies all commodities in the new crop groups and the subgroups therein (i.e., 25A and 25B for fresh herbs and dried herbs) and provides updated representative commodities for each crop group and subgroup. The effective date of the final rule is January 5, 2021.

PFAS Chemicals Harm the Immune System, Decrease Response to Vaccines, New EWG Review Finds

Tasha Stolber Ph.D., Environmental Working Group

https://www.ewg.org/news-and-analysis/2020/11/pfas-chemicals-harm-immune-system-decrease-response-vaccines-new-ewg

Toxic PFAS chemicals, notorious for contaminating drinking water supplies across the U.S., are harmful to nearly every human organ, and the immune system is particularly vulnerable. PFAS mixtures, which are used in a variety of consumer products, can be found in the body of nearly every American and in the developing fetus.

Studies suggest a connection between PFAS exposure and suppressed immune function, lower vaccine effectiveness, hypersensitivity and greater risk of autoimmune diseases. A recent review of human epidemiological studies by Rappazzo et al. shows that PFAS may influence antibody response to vaccination and other health issues, such as asthma.[i]

A study published in October by renowned environmental health expert Philippe Grandjean, M.D., and colleagues at the Harvard T.H Chan School of Public Health found that higher levels of PFAS in the blood, specifically PFBA, were associated with increased severity of Covid-19 infections. PFBS is one of the only known PFAS to substantially accumulate in lung tissue, and this connection may be linked to the study findings.

The Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry have acknowledged in a statement that PFAS exposure harms the immune system and may put certain populations at greater risk of contracting Covid-19 and greater risk of increased severity of infection.

Tests commissioned by Environmental Working Group, Commonweal and Rachel's Network, in 2005 and 2009, revealed that American babies are born contaminated, via the umbilical cord, with PFAS and other toxic chemicals.[ii]

In a 2016 review of PFAS immunotoxicity, the National Toxicology Program concluded that two of the most studied members of this large family of chemicals, PFOA and PFOS, can pose "an immune hazard to humans based on a high level of evidence that PFOA (and PFOS) suppressed the antibody response from animal studies and a moderate level of evidence from studies in humans."[iii] These studies on antibody response are some of the strongest evidence of adverse effects on the human immune system.

The link between higher blood levels of PFAS and reduced antibody production following vaccination has been observed in studies of both children and adults. Although nutrition, exercise and other factors affect immune response, PFAS also clearly plays a role. The developing immune system may be particularly vulnerable to immunotoxicity in the earliest stages of life, so it is essential to protect children's health from PFAS during that time.

A study published in 2017 reported that elevated PFAS levels during the first six months of infancy were associated with a weaker response to tetanus vaccination.[iv] In a 2013 study of 431 Danish children, PFOS and PFOA levels in blood were linked to decreased levels of antibodies against tetanus and diphtheria.[v] A drinking water guideline for PFOA and PFOS of 1 part per trillion, or ppt, would protect children from this health harm.

Research presented at a national conference on PFAS in June 2019 showed a lower response to the measles vaccination among a group of 237 West African children who had been exposed to low levels of PFAS.[vi] A 22 and 26 percent decreased antibody response was associated with a doubling of PFOS and PFDA levels in blood, respectively. Children at four and a half months in this study had levels of PFAS in their blood ranging from medians of 0.1 ng/ml, for PFHxS, to 0.68 ng/ml, for PFOA, and 0.77 ng/ml, for PFOS, demonstrating immunotoxicity even at very low levels. In 2008, EWG tested American newborns' cord blood and found medians of 0.69 ng/ml for PFOA and 1.54 ng/ml for PFOS.[vii]

PFAS immunotoxicity can also affect vaccine response later in life, as PFOA levels in adults' blood corresponded to reduced immunity from a flu vaccine.[viii] In a small study of adults, PFAS chemicals, especially in long-chain versions, were linked to decreased response following tetanus-diphtheria boosters.[ix]

Children are especially vulnerable to asthma, an example of immune system hypersensitivity also linked to exposure to multiple PFAS chemicals. A 2013 study of Taiwanese children was one of the first to connect nine PFAS chemicals with juvenile asthma, asthma severity and immune system markers.[x] A 2019 study connected the sum of PFAS in blood, as well as PFOS and PFHxS, with asthma in a study of Norwegian adolescents.[xi] A 2016 analysis related PFOS, PFOA and PFHxS levels with significant increases in adolescent food allergies, another immune system hypersensitivity.[xii]

Some studies also point to lower resistance to disease, yet another result of immune system suppression. Higher maternal levels of PFOS and PFOA during pregnancy were linked to increased fever in young children, which shows an increased risk of infections.[xiii] In another Norwegian study, prenatal PFAS exposure affected people's ability to fight off cold and stomach infections.[xiv]

EWG's child-protective drinking water standard for PFAS chemicals of 1 ppt represents a concentration that, according to current epidemiological research, would safeguard the immune system. This standard would ensure drinking water is not at risk but would not eliminate exposure through contaminated food, food wrappers, dust and consumer products, all of which would need to have lower levels of PFAS for the immune system to be protected.

In July, a peer-reviewed study by EWG published in the journal Chemosphere concluded that PFAS disposal approaches of incineration, landfilling and wastewater treatment all further contribute to environmental contamination that can lead to exposure to PFAS from air or water. This exposure can further compromise the immune system and put people at greater risk of falling seriously ill from Covid-19.

In addition to causing immune system harm, PFAS has been linked to cancer. A peer-reviewed study by EWG and a team of scientists at Indiana University published in March in the International Journal of Environmental Health and Public Health found strong and moderate evidence that multiple PFAS chemicals exhibit several of the key characteristics of carcinogens.

The scientific research, including epidemiological studies, that shows damage to the immune system and decreased response to vital vaccines with early life PFAS exposure should strengthen the argument made to policymakers about a sweeping package of reforms to address the unfolding

President-elect Joe Biden has pledged to make protecting the environment and the public from these "forever chemicals" a top priority in his administration, including setting enforceable limits for PFAS in drinking water and designating PFAS as hazardous substances under the Superfund cleanup law.

EWG will work with the incoming Biden-Harris administration and Congress to take a series of steps to protect the public from further exposure to PFAS chemicals, including:

- Reduce industrial emissions of PFAS in the air and water.
- Designate PFAS as hazardous substances under the federal Superfund law.
- Set a national drinking water standard for PFAS in tap water.
- Phase out the use of PFAS in household products.
- Place a moratorium on the approval of new PFAS.
- Expand PFAS reporting by industry.

Look for information about PFAS chemicals here.

EPA by Fiat Overturns State Authority to Restrict Pesticides in the Face of Its Faltering Programs

Beyond Pesticides Blog

https://beyondpesticides.org/dailynewsblog/2020/11/epa-by-fiat-overturns-state-authority-to-restrict-pesticides-in-the-face-of-its-faltering-programs/

(Beyond Pesticides, November 13, 2020) The toxic herbicide dicamba is once again at the center of a larger story about states' authority to regulate pesticides beyond federal dictates. The Trump EPA (Environmental Protection Agency) has just made it much harder for state regulations to be more protective than federal rules are. It did so via a footnote embedded in dozens of pages of regulatory documents related to EPA's registration of three new dicamba products. Given conservatives' long-standing lip service to "states' rights," this EPA's thwarting of the wishes of individual states to respond to their respective circumstances could easily be regarded as an odd — though, during this administration, hardly singular — stance. This latest development underscores EPA's continuing failures to protect people and the environment, and the increasing tension between centralized, federal regulation and more-local regulation, whether by states or smaller localities.

For nearly 30 years, state regulators have used a Section 24 provision of FIFRA, the Federal, Insecticide, Fungicide and Rodenticide Act — the law that gives EPA authority to regulate pesticides — to establish specific restrictions, on use of federally registered pesticide products, that go beyond what EPA has mandated. The agency has long allowed states to add to the edicts of federal pesticide labels in order to protect workers, crops, and/or the environment under particular local circumstances.

Section 24 harbors two subsections at issue, as Progressive Farmer notes: "Section 24(a) establishes that states have the right to regulate federal pesticides through state legislatures or rulemaking procedures, a time-consuming and often political process that can take years. Section 24(c) is more nimble. It grants states the right to issue 'special local needs labels' on an annual basis, to address local agricultural, environmental or public health needs by granting 'additional uses' to federal pesticide labels." Historically, the 24(c) provision has been used extensively to expand pesticide uses allowed on product labels by federal registrations.

For several decades, EPA has construed 24(c) to mean that states can establish more-restrictive regulations than the federal. Indeed, in 1996, it published this as guidance for states. In the past few years, especially, as EPA has failed to enact constraints on the uses of dicamba, which has caused massive devastation to non-target crops and trees (as well as to wildlife), many states have moved to establish additional controls on the pesticide's use.

Beyond Pesticides reported in 2019 that "A number of states, including Indiana, Minnesota, Missouri, South Dakota, North Dakota, Illinois, and Arkansas, have instituted restrictions on [dicamba] use that surpass those accompanying the federal registration of the compound. Texas, Iowa, Georgia, Kentucky, Alabama, and North Carolina are all eyeing 24(c) requests [for stricter-than-federal controls] for tighter application windows, additional training requirements, better record keeping, new fine structures for violations, and other modifications of the federal label."

This new (and stealthily announced) EPA impediment to states' ability to create additional constraints hinges on the agency's decision to reinterpret what states can do under Section 24(c) of FIFRA. EPA confirmed that the subject footnote represents an official policy change, saying, "EPA has determined that moving forward, EPA may disapprove any state registrations under FIFRA section 24(c) that further restrict use of pesticides registered by EPA, regardless of

the chemicals involved. If a state wishes to further restrict use of a pesticide, they must do so under section 24(a) of FIFRA."

This change means that state regulators will now have to navigate state legislative or rulemaking processes per Section 24(a) in order to enact such protections — far less "nimble" approaches to often urgent, seasonal circumstances. In the case of dicamba, states have frequently chosen to control the timing, nature, location, or quantity of applications of the pesticide in efforts to diminish the damage it causes to non-target plants and organisms. In addition, this reversal by EPA overturns decades of precedent, and as Progressive Farmer reports, "breaks EPA's past promises to the states and threatens to damage the longstanding cooperative relationship between federal and state regulators."

Although EPA did foreshadow this change in March 2019, state regulators are feeling blindsided. Back then, EPA announced — during one wave of state additions to federal labels on dicamba — that it might alter its handling of states' requests to enact stricter controls, claiming that the actual language of 24(c) allows states only to permit additional uses of a federally registered pesticide. EPA was apparently disturbed by the magnitude of use of 24(c) by states to restrict dicamba, particularly in the South and Midwest.

EPA said at the time, "Due to the fact that section 24(a) allows states to regulate the use of any federally registered pesticide, and the fact that some states have instead used 24(c) to implement cut-off dates (and/or impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) requests and the circumstances under which it will exercise its authority to disapprove those requests." State regulators reacted to this announcement with great concern: officials from 10 different states urged EPA not to adopt the policy change, as did the National Association of State Departments of Agriculture and the Association of American Pesticide Control Officials (AAPCO).

Here's where the blindsiding arises: EPA Office of Pesticide Programs director Rick Keigwin said, alongside the 2019 announcement, that no changes would be made to the agency's 24(c) interpretation without the input of state regulators. "Before adopting any changes in this regard, we will solicit public comment on our proposed new approaches," he wrote in the spring and summer of 2019. "We look forward to a robust public dialogue with our stakeholders, partners and co-regulators on this matter."

But that did not happen, state regulators report. "There was no public comment period, no consultation," said Leo Reed, an Indiana pesticide regulator and president of AAPCO. Rose Kachadoorian, a pesticide regulator from Oregon (where many 24(c) registrations have occurred) said, "We are co-regulators with EPA, and we believe we have a good relationship with EPA. But this doesn't feel like a co-regulator relationship. A change in the agency's interpretation of a law should go through a public process, especially when it deviates from a longstanding practice that EPA has said was fine in [its written guidance]." She also notes that state regulators are frustrated because it seems that EPA is changing its 24(c) policy in order to address its annoyance over state action on one pesticide, dicamba, "potentially at the expense of countless other pesticides that require state-specific restrictive 24(c) labels."

The existing guidance on 24(c) remains on the EPA website, creating confusion and a "legal limbo" for state regulators. Brook Duer, a staff attorney at Penn State's Center for Agricultural and Shale Law, opined that even if the literal text of 24(c) comports with EPA's new interpretation, the decades-old, published interpretation and guidance represent a "binding norm" under federal administrative law. He commented: "So unilaterally reversing it through a footnote, without a more transparent and public process — like what EPA previously represented would be undertaken — is certainly unorthodox and may even create the basis for litigation to prevent the reversal."

Further, Mr. Duer said, "This is still totally up in the air. There's no guidance on what happens to restrictive 24(c) labels that are in effect right now — is this a blanket invalidation of them all?" He expects that states may have a hard time getting the clarity they need from any court, in large part because states do not have the budgetary resources to press the matter legally, given both generally declining resources during the pandemic and the significant resource drain that dealing with dicamba has been — even as those states see another season of dicamba use coming in 2021.

These tussles over who can regulate pesticide use beyond federal registration rules, and in what circumstances, happen not only at the federal–state juncture. Many U.S. localities, such as counties and municipalities (often supported by the

advocacy of community and nonprofit groups), have sought to act more protectively on pesticide use for their jurisdictions — and often found it tough going.

Typically, a locality will establish stricter regulations, and nearly inevitably, preemption — the ability of a "higher" level of government to override laws or regulations of a lower level, sometimes promoted by industry interests — takes center stage as feds preempt state efforts, or states preempt those of counties or municipalities. An example of the latter was covered by Beyond Pesticides from 2017–2019, when an initiative in Lincoln County, Oregon to ban aerial pesticide spraying had initial success, but was ultimately struck down by a court, citing state preemption.

Beyond Pesticides noted in its coverage of that 2019 EPA announcement on 24(c) that, "[The] issue of preemption of localities' desires to protect their populations and environment has become an increasingly dynamic frontier at the nexus of pesticide use, health, and environment." Localities generally face an uphill slog in trying to protect their residents, lands, and resources from the assaults of pesticides, GMOs (genetically modified organisms), factory farms, fracking sites, or a host of other ills that communities may find objectionable because of health, safety, and/or environmental concerns.

Beyond Pesticides has previously provided "explainers" on how preemption operates, and the source of some of the conflict about preemption at the state–local nexus. Salient excerpts are offered here.

On the origin of pre-emption, from a 2017 Daily News Blog article: "The tension between states' preemptive authority, and the emerging insistence on greater local control to protect its residents, goes to the very heart of not only how governments at state and local levels derive their authority in a democratic system, but also, how that authority is shared — or not. The Supremacy Clause of the U.S. Constitution (Article VI, Clause 2) clearly establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the supreme law of the land. At the state level, things can become a bit less clear. Each state has its own Constitution, of course, its own interpretive history of the document, and its own assignations of authority regarding the host of issues with which governments concern themselves."

Then, from a 2019 Daily News Blog entry: "In 1991, the U.S. Supreme Court ruled, in Wisconsin Public Intervenor v. Mortier, that the federal law known as FIFRA — the Federal Insecticide, Fungicide and Rodenticide Act — which regulates pesticide distribution, sale, and use, does not preempt local jurisdictions from creating more-stringent pesticide regulation. Thus, it was ruled that FIFRA nowhere expressly supersedes local regulation. However, and critically, the court left intact the ability of states to preempt such regulations. The essential argument of localities, and of Beyond Pesticides in the many cases in which it has participated, is that state preemption laws effectively deny local residents and decision makers their democratic right to better protection when a community decides that minimum standards set by state and federal law are insufficient.

"This tussle between 'higher' and 'lower' levels of government re: which [can] claim authority to regulate factors in public health and safety, which has played out across communities in the U.S., goes to some of the fundamental principles on which the American democratic experiment is based. In 2012, Beyond Pesticides Executive Director Jay Feldman wrote, 'This is a very interesting story in American democracy. How did we get to this point in the history of the [U.S.] that we have taken away the local police powers of our local jurisdictions to protect the local public health of our people? This challenges a basic tenet that this country is based on — local governance.'"

Even in this challenging context, some localities have succeeded in passing and enacting ordinances that restrict pesticide use more stringently than federal and state regulations would. In 2013, Takoma Park, Maryland was the first in the nation to restrict the use of cosmetic lawn pesticides on both private and public property within the city.

More recently, Montgomery County, Maryland has successfully adopted its Healthy Lawns Act, which restricts toxic pesticide use on public and private property; the City of Gaithersburg has recently opted in to that law. Prince George's County (also in Maryland) and Baltimore are considering similar ordinances. The pesticide industry spent years challenging Montgomery County's law; after numerous court proceedings, the Maryland Court of Appeals granted the county the authority to restrict pesticides on all property, public and private, within its jurisdiction. With the court case

settled, communities in the state that had long wanted to rein in use of toxic pesticides that degrade residents' and environmental health can now do so.

In addition, both Portland and South Portland, Maine have successfully established stricter-than-state regulations on pesticide use. Both municipalities have banned toxic pesticide use on public and private property. None of these local initiatives passed (and survived legal challenges) without very hard work and well-run education and advocacy campaigns. But localities can adopt protective ordinances governing the use of pesticides, and even in states that are more problematic, may be able to do so at least for public lands.

Beyond Pesticides has long asserted the rights of local governments to protect public health and the environment, especially when federal and state governments fail to enact adequate protections. Localities across the country continue the work to pass statutes that would better safeguard residents and resources. Organized people — at local and state levels — can act, whether on dicamba on agricultural fields or glyphosate in public parks, to protect their communities. Learn more about how with Beyond Pesticides' factsheet on preemption, its Lawn and Landscape Tools for Change, its webpage of Organizational Resources, and the Beyond Pesticides and Organic Consumers Association map of U.S. Pesticide Reform Policies.

PFAS Consumer Products Regulation: Legislative Update
Suzanne Englot, The National Law Review (CMBG3 Law)
https://www.natlawreview.com/article/pfas-consumer-products-regulation-legislative-update

As 2020 comes to a close and we begin to discuss in earnest the potential impacts of a Biden-Harris administration on U.S. environmental policy, it is important to look at the current and potential PFAS consumer products regulations. While more movement has occurred in the regulation of PFAS in drinking water due to its more direct impact on human health and the environment, the progression of legislation of PFAS-containing consumer products is still notable and provides insight on states' concerns in that area.

Categorizing PFAS Consumer Products Regulations

The regulations we are seeing so far with respect to PFAS-containing consumer products can be divided into three main categories. The first category is Contact, which includes regulation of PFAS used in products that humans come into contact with. The second category is Consumption, which covers ways that PFAS can be ingested by humans, either through food or through the transfer of PFAS from food packaging. The third category, which is more of a catch-all and has some overlap with the others, is Warning. This includes laws that exist entirely to provide warnings to consumers about PFAS content in the products they purchase or come into contact with.

AFFF

It is important to first note that while firefighting foam is not a "consumer" product, it is still included in this category of regulation because of its potential to come into contact with certain individuals — firefighters, soldiers, and airport personnel—as other retail products would. The regulation existing for Aqueous Film-Forming Foam, or AFFF, generally falls into one of two category. The first is a type of ban on the manufacture, sale and use of the foam, while the second is a law requiring disclosure of PFAS use.

There are three variations on AFFF bans in effect in various states. The first is an outright ban, whereby the use of AFFF is completely banned upon introduction of regulation into law. Georgia is the only state that currently has an outright ban in effect. The second is a gradual ban, which would ban all use of AFFF at a date in the future, to allow the public and private sectors to slowly phase out use and find suitable alternatives. California, New York State and Washington State both have enacted a PFAS ban to be put into effect in a number of years. The third variation on AFFF bans is a specific ban, whereby the foam's use is prohibited from particular non-essential activities, like firefighter training or airport runway incursion drills. Some states have taken this route because AFFF is so effective at preventing or fighting fires, with no exact alternative existing, that its use in real emergencies is allowed to continue. Where training of firefighters

and military and airport personnel can be done without discharging AFFF, the states of Arizona, Colorado, Kentucky, Minnesota, and Virginia have required that it not be used.

The second category of contact type regulations for AFFF, requiring disclosure of use, has so far only been enacted in New York, Colorado, and Washington.

PPE

Personal Protective Equipment (PPE) that contains PFAS is starting to be regulated as well, also in the context of firefighting. Along with general concern from the public about the health impacts of PFAS, a recent study from Notre Dame raised further questions about PFAS in firefighting gear. The study found that PFAS can be transferred from the outer surfaces of turnout gear to the thermal liners, which contact skin. This type of regulation, which has been enacted in California, Colorado, and Washington, does not establish a ban on use, but a disclosure requirement, where companies must give written notice of the "intentional addition" of PFAS in firefighting gear.

Cosmetics

The last type of contact regulation found in the United States is unique to California, and is one of the first examples of a ban of a more widely available and used consumer product. In October, the governor signed an act banning the use of PFAS on cosmetics. It will come into effect by 2025, giving companies time to phase out any PFAS in their products.

Consumption

The FDA has been studying the presence of PFAS in food, especially animals and animal byproducts, and its conclusion so far has been that the levels found in the few types of food it did detect PFAS in do not rise to the level of a human health concern. The agency does recommend that people check local advisories, especially for fish consumption. In certain states, including Alabama, Connecticut, Minnesota, New Jersey, and Wisconsin, advisories are in place that recommend a limit on the quantity of fish consumed.

Following the release of reports by environmental watchdog groups revealing PFAS in the to-go containers used by a number of fast food and fast food-adjacent restaurants and grocery stores, public pressure has been mounting to regulate food packaging. So far, regulation has been enacted in the states of Washington and Maine, with legislation introduced in an addition 10 states for debate. The New York State legislature also passed a ban on PFAS in food packaging in July 2020, but as of the publishing of this article, the governor has still not signed the bill into law.

Warning

This category is a catchall designation for laws that require self-reporting of a list of certain chemicals or substances that have been amended to cover PFAS. In California, most notably, Proposition 65 has been in force since 1986. The law requires companies to provide consumers with a clear and reasonable warning when their products contain any of the substances on a constantly updated list. PFOA and PFOS are included on the list of substances that companies must warn consumers that their products contain. Relatedly, a bill has been introduced in the New York State legislature that mirrors California's Prop 65 law. When passed, certain PFAS deemed to be of concern could be included on the list of substances of concern in New York.

Another type of warning regulation that exists in the US and has been applied to PFAS is laws that cover the use of toxic chemicals in children's products. Maine and Oregon both have enacted this type of legislation, and PFOS is listed on both states' lists of chemicals of high concern, which require not only reporting on content, but on a company's supply chain.

Looking Forward

Based on current trends, it is certain that more regulation of PFAS-containing consumer products is on the horizon. Specific bans on non-emergency use of AFFF are likely to increase, and more iterations of this ban are proposed in a

number of states across the country. As mentioned earlier, PFAS-containing food packaging phase-out legislation is proposed in an additional 10 states beyond what is in effect currently. Considering both the public pressure on that type of product and food consumption being a prominent source of human exposure, more regulation is likely forthcoming. Finally, promulgation of more warning regulations, which put the onus on companies to self-report but are more quickly implemented than a ban or phase-out, will likely be expanded to cover PFAS that are of particular concern to the public, like PFOA and PFOS. This last category of regulation may seem like it has less teeth than others, but on top of the violations companies can accrue for ignoring or misreporting, Prop 65-esque legislation allows for extensive data gathering, which is so important as we continue to learn more about the human health impacts of PFAS.

Suit Challenges EPA FIFRA Enforcement Action Against Products Sold as "Cleaning Agents"
Hume Ross, JD Supra (Wiley Rein LLP)
https://www.jdsupra.com/legalnews/suit-challenges-epa-fifra-enforcement-13708/

The U.S. Environmental Protection Agency (EPA) has made clear that, during the COVID-19 pandemic, it will aggressively pursue businesses that it believes are selling unregistered pesticide products. A recent press release from EPA Region 2 touting its enforcement activities is one example of this. But is EPA, in some instances, pushing the boundaries of its jurisdiction in pursuing its objectives? A recent suit filed by Zuru, LLC, claims that it has crossed the line. Zuru distributes a cleaning wipe product called "Bactive" that contains chlorhexidine digluconate, which is an active ingredient in some registered disinfectants. Bactive's packaging, however, makes no express pesticidal claims. The suit (Zuru, LLC v. U.S. EPA et al., 20-cv-2433 (D.D.C. filed October 5, 2020)) may help delineate the boundary between "pesticides" and "cleaning products" under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Under EPA's implementing regulations for FIFRA, the Agency has broad authority to regulate "pesticides," that is, products that are "intended for ... preventing, destroying, repelling, or mitigating any pest... ." 40 C.F.R. § 152.15. That section also lays out several ways that the requisite intent can be found. The seller could "claim[], state[], or impl[y]" that the product can be used as a pesticide. The product could contain an active ingredient that has no other commercially valuable purpose. Or, the seller could have "actual or constructive knowledge" that the product "will be used, or is intended to be used, for a pesticidal purpose."

FIFRA's implementing regulations also specify a group of products that are subject to a different test, set forth in 40 C.F.R. § 152.10: "[d]eodorizers, bleaches, and cleaning agents." These three types of products "are not considered to be pesticides unless a pesticidal claim is made on their labeling or in connection with their sale and distribution." Thus, on one hand, the inquiry is simplified – there is no need to inquire into the "actual or constructive knowledge" of the seller," or whether the "active ingredient ... has no other commercially valuable purpose."

Complexity creeps back in, however, as it now must be determined whether a product is a deodorizer, bleach, or cleaning agent within the meaning of 40 C.F.R. § 152.10. We know that, even if a product might also be a disinfectant, it can still be a cleaning agent or deodorizer, because bleaches are disinfectants, and this does not take them outside 40 C.F.R. § 152.10. EPA has published a "Fact Sheet" entitled "Determining If a Cleaning Product Is a Pesticide Under FIFRA" which states that "for the purposes of the fact sheet" "cleaning products" (which the fact sheet appears to be using as a catch-all for "cleaning agents" and "deodorizers") are products which are "intended to clean away or remove inanimate material from a surface, water or air."

The fact sheet states that, for cleaning products, the relevant inquiry is whether any "claim or implication" of pest mitigation is made "in connection with the sale or distribution." This includes elements of the "claim[], state[], or impl[y]" language in 40 C.F.R. § 152.15 and the "unless a ... claim is made" language in 40 C.F.R. § 152.10. A statement made by a third party could be probative of whether the seller has constructive knowledge that its product will be used to disinfect (relevant under 40 C.F.R. § 152.15). But when might third party statements be part of the "sale or distribution" of a product as described in 40 C.F.R. § 152.10?

This question, as well as the necessary level of "implication" of pesticidal activity needed to constitute a pesticidal claim, may soon be litigated if Zuru's suit proceeds.

Zuru's "Bactive" cleaning wipes contain chlorhexidine digluconate, a registered pesticide active ingredient. Bactive's packaging does not make any explicit pesticidal claims. But EPA has observed that third party resellers have described the wipes as "disinfecting," stated that they "kill germs," and displayed them alongside disinfectant products. Comments-section sleuths on Target.com have also informed fellow shoppers that "[t]hese ARE disinfecting wipes, unlike the other comments state! READ THE INGREDIENTS and do a SEARCH online!"

EPA also takes issue with the implications of the Bactive wipe packaging, specifically noting that "the name and logo imply that the product is intended for antimicrobial use and public health protection, and that the word 'Bactive' implies bacterial fighting properties." EPA also argues that the cross logo is considered a universal first aid sign. Images of the packaging are included as Exhibit 1 to Zuru's complaint.

EPA has not yet seen fit – the litigation being in its early stages – to further observe that Bactive also evokes bacta, the fictional, presumably antiseptic, liquid in which indispensable characters in the Star Wars films are immersed after finding themselves on the business end of a lightsaber or wampa ice creature.

EPA and Zuru have jointly requested a 30-day extension to EPA's deadline to answer so that they may possibly "resolve the claims ... without further litigation." Absent such resolution, or a further extension, EPA's answer will be due December 8, 2020. If the case proceeds, it could help determine the contours of the "cleaning agent" provisions of 40 C.F.R. § 152.10.

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And while you're reading.... Remember to shoot your coworkers a shooting star!